BUSINESS AND COMMERCE CODE

TITLE 4. BUSINESS OPPORTUNITIES AND AGREEMENTS

CHAPTER 57. AGRICULTURAL, CONSTRUCTION, INDUSTRIAL, MINING, FORESTRY, LANDSCAPING, AND OUTDOOR POWER EQUIPMENT DEALER AGREEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 57.001. SHORT TITLE. This chapter may be cited as the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.002. DEFINITIONS. In this chapter:

(1) "Current net parts cost" means an amount equal to the current net parts price of a repair part, less any trade or cash discount typically given to a dealer in the normal, ordinary course of ordering a repair part.

(2) "Current net parts price" means:

(A) with respect to a repair part in current stock, the price for the repair part listed in the supplier's price list or catalog in effect:

(i) when a dealer agreement is terminated or discontinued; or

(ii) for purposes of Subchapter F, when the repair part is ordered; and

(B) with respect to a repair part that has been superseded, the price for a repair part listed in the supplier's price list or catalog in effect when a dealer agreement is terminated or discontinued that:

(i) performs the same function and is for the same purpose as the superseded part; and

(ii) is listed under a different part number than the superseded part.

(3) "Dealer" means a person who is primarily engaged in the business of:

(A) selling or leasing equipment or repair parts for equipment to end users of the equipment; and

(B) repairing or servicing equipment.

(4) "Dealer agreement" means an oral or written agreement or arrangement, of definite or indefinite duration, between a dealer and a supplier that provides for the rights and obligations of the parties with respect to the purchase or sale of equipment or repair parts.

(5) "Dealership" means the retail sale business engaged in by a dealer under a dealer agreement.

(6) "Demonstrator" means equipment in a dealer's inventory that:

(A) has never been sold at retail; and

(B) is or has been made available to a potential customer, as authorized by the supplier, without charge or under a short-term rental agreement for purposes of demonstrating its use and with the intent of encouraging the customer to purchase the equipment.

(7) "Equipment":

(A) means machinery, equipment, or implements or attachments to the machinery, equipment, or implements used for, or in connection with, any of the following purposes:

(i) lawn, garden, golf course, landscaping, or grounds maintenance;

(ii) planting, cultivating, irrigating, harvesting, or producing agricultural or forestry products;

(iii) raising, feeding, or tending to livestock, harvesting products from livestock, or any other activity in connection with those activities; or

(iv) industrial, construction, maintenance, mining, or utility activities or applications; and

(B) does not mean:

(i) trailers or self-propelled vehicles designed primarily for the transportation of persons or property on a street or highway; or

(ii) off-highway vehicles.

(8) "Family member" means a child or other lineal

descendant, a son-in-law, a daughter-in-law, or the spouse of an individual.

(9) "Index" means the producer price index for construction machinery series identification number pcu333120333120 published by the Bureau of Labor Statistics of the United States Department of Labor or a successor index measuring substantially similar information.

(10) "Inventory" means equipment, repair parts, data processing hardware or software, or specialized service or repair tools.

(11) "Net equipment cost" means an amount equal to the sum of the price the dealer actually paid to the supplier for equipment, and:

(A) any freight paid by the dealer from the supplier's location to the dealer's location, payable at the cost stated on the invoice, or, if there is no invoice, at the truckload rate in effect when a dealer agreement is terminated; and

(B) the set-up cost of labor incurred in preparing the equipment for retail sale or lease, reimbursable at the dealer's standard labor rate charged by the dealer to its customers for non-warranty repair work, unless a supplier has established a reasonable set-up time to prepare the equipment for retail sale or lease, in which case the labor will be reimbursable at an amount equal to the reasonable set-up time in effect as of the date of delivery multiplied by the dealer's standard labor rate.

(12) "New equipment" means, for purposes of determining whether a dealer is a single-line dealer, equipment that can be returned to the supplier following termination of a dealer agreement under Subchapter H.

(13) "Person" means:

(A) an individual, corporation, partnership, limited liability company, company, trust, or any other form of business entity, including any other entity in which a person has a majority interest or of which a person has control; or

(B) an officer, director, or other individual who actively controls the activities of an entity described by Paragraph (A).

(14) "Repair parts" means all parts related to the repair of equipment, including superseded parts.

(15) "Single-line dealer" means a dealer that:

(A) has purchased construction, industrial, forestry, or mining equipment from a single supplier constituting 75 percent or more of the dealer's total new equipment that is construction, industrial, forestry, or mining equipment, computed on the basis of net equipment cost; and

(B) has a total annual average sales volume of equipment acquired from the single-line supplier in excess of $25 million for the five calendar years immediately preceding the applicable determination date, provided, however, that the $25 million threshold will be increased as of September 1 of each year by an amount equal to the threshold on the date the determination is made multiplied by the percentage increase in the index from January of the immediately preceding year to January of the year the determination is made.

(16) "Single-line dealer agreement" means a dealer agreement between a single-line dealer and a single-line supplier that only provides for the rights and obligations of the parties with respect to the purchase and sale of construction, forestry, industrial, or mining equipment.

(17) "Single-line supplier" means the supplier that is selling to a single-line dealer construction, industrial, forestry, or mining equipment constituting 75 percent of the single-line dealer's new equipment that consists of construction, industrial, forestry, and mining equipment.

(18) "Specialty agricultural equipment" means equipment that is designed for and used in:

(A) planting, cultivating, irrigating, harvesting, and producing agricultural products; or

(B) raising, feeding, or tending to livestock or harvesting products from livestock.

(19) "Specialty agricultural equipment supplier" means a supplier of specialty agricultural equipment whose:

(A) gross sales revenue to the dealer is less than the threshold amount;

(B) product line does not include farm tractors or combines;

(C) sales of outdoor power equipment to the dealer do not exceed 10 percent of the supplier's total sales to the dealer during the one-year period ending on the last day of the calendar month immediately preceding the effective date of the termination of the dealer agreement; and

(D) qualification for that status is determined on a case-by-case basis depending on the sales of the applicable dealer and the sales to the applicable dealer by the specialty agricultural equipment supplier.

(20) "Supplier" means a person engaged in the business of the manufacture, assembly, or wholesale distribution of equipment or repair parts. The term includes any successor in interest of a supplier, including:

(A) a receiver, trustee, liquidator, assignee, purchaser of assets or stock, or surviving corporation resulting from a merger, liquidation, or reorganization of an original supplier; and

(B) a purchaser of all or substantially all of a supplier's assets, such as a purchaser of all or substantially all of the inventory of the supplier or any division or product line of the supplier.

(21) "Terminate" or "termination" means to terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealer agreement.

(22) "Threshold amount" means the lesser of 10 percent of the dealer's gross sales revenue or $350,000, in each case based on net sales of the dealership during the one-year period ending on the last day of the calendar month immediately preceding the effective date of the termination of the dealer agreement, provided, however, that the $350,000 amount must be increased each year by an amount equal to the amount on the year in which the determination is made multiplied by the percentage increase in the index from January of the immediately preceding year to January of the year in which the determination is made.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2,

eff. September 1, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1233 (H.B. 1548), Sec. 1, eff. June 14, 2019.

Sec. 57.003. WAIVER OF CHAPTER VOID. An attempted waiver of a provision of this chapter or of the application of this chapter is void.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

SUBCHAPTER B. PROVISIONS REGARDING DEALER AGREEMENT OR DEALERSHIP

Sec. 57.051. CERTAIN PROVISIONS VOID. The following provisions contained in a dealer agreement are void:

(1) any provision that purports to elect the application of a law of another state instead of the law of this state; and

(2) any provision that requires a dealer to pay attorney's fees incurred by the supplier.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.052. CHANGE IN OWNERSHIP OR FINANCIAL STRUCTURE. A supplier may not prevent, by contract or otherwise, a dealer from changing its capital structure or the means by or through which the dealer finances its operations, if:

(1) the dealer gives prior notice of the change to the supplier; and

(2) the dealer at all times meets any reasonable capital standards required by the supplier pursuant to a right granted in the dealer agreement and imposed on similarly situated dealers.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.053. RELEASE OF LIABILITY PROHIBITED. A supplier

may not require a dealer to assent to a release, assignment, novation, waiver, or estoppel that would release any person from liability imposed by this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

SUBCHAPTER C. SALE, TRANSFER, OR OWNERSHIP OF DEALERSHIP

Sec. 57.101. TRANSFER OF INTEREST IN DEALERSHIP BY SUCCESSION; SINGLE-LINE DEALER AGREEMENTS. (a) This section applies only to single-line dealer agreements.

(b) If a dealer dies, a supplier has 90 days in which to consider and make a determination on a request by a family member to enter into a new dealer agreement to operate the dealership. If the supplier determines that the requesting family member is not acceptable, the supplier shall provide the family member with a written notice of its determination with the stated reasons for nonacceptance. This section does not entitle an heir, personal representative, or family member of the dealer to operate a dealership without the specific written consent of the supplier.

(c) Notwithstanding Subsection (b), if a supplier and dealer have previously executed an agreement concerning succession rights before the dealer's death, and if that agreement is still in effect, the agreement shall be observed even if it designates someone other than the surviving spouse or an heir of the decedent as the successor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.102. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT DEALER'S REQUEST. (a) This section applies only to a dealer agreement that is not a single-line dealer agreement.

(b) If a supplier has contractual authority to approve or deny a request for the sale or transfer of a dealer's business or an equity ownership interest in the dealer's business, a dealer may request that the supplier approve or deny a request for the sale or transfer of a dealer's business or an equity ownership interest in

the dealer's business to a proposed buyer or transferee. The dealer's request must be in writing and must include character references and reasonable financial, personal background, and work history information with respect to the proposed buyer or transferee.

(c) Not later than the 60th day after receipt of a request under Subsection (b), the supplier shall either approve the sale or transfer or send a written response to the dealer stating the supplier's denial of the request and the specific reasons for the denial. The request is considered approved if the supplier does not approve or deny the request by the deadline.

(d) A supplier may deny a request made under this section only if the proposed buyer or transferee fails to meet the reasonable requirements consistently imposed by the supplier for purposes of determining whether to approve a new dealer or a request for approval of a sale or transfer of a dealer's business or equity ownership in the dealer's business.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.103. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT REQUEST OF PERSONAL REPRESENTATIVE. (a) This section applies only to a dealer agreement that is not a single-line dealer agreement.

(b) If a dealer dies and the supplier has contractual authority to approve or deny a request for the sale or transfer of a dealer's business or an equity ownership interest in the dealer's business, the personal representative of the dealer's estate, or any other person with authority to transfer the dealer's assets, must submit to the supplier a written request for approval of the sale or transfer of the business or ownership interest not later than the 180th day after the date of the dealer's death.

(c) If a timely request for approval of a sale or transfer is made as provided by Subsection (b), the supplier must approve or deny the request in accordance with the procedures prescribed by Sections 57.102(c) and (d) for a supplier's approval or denial of a request for a sale or transfer made under Section 57.102.

(d) Notwithstanding any other provision of this chapter to

the contrary, any attempt by the supplier to terminate the dealer agreement as a result of the death of a dealer will be delayed until there has been compliance with the terms of this section or the 180-day period has expired, as applicable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

SUBCHAPTER D. TERMINATION OF AGREEMENTS OTHER THAN SINGLE-LINE DEALER AGREEMENTS

Sec. 57.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a dealer agreement that is not a single-line dealer agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.152. TERMINATION BY DEALER; WRITTEN NOTICE. A dealer must give the supplier at least 30 days' prior written notice of termination.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.153. TERMINATION BY SUPPLIER; GOOD CAUSE REQUIRED. A supplier may not terminate a dealer agreement without good cause.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.154. GOOD CAUSE DETERMINATION. (a) Except as specifically provided otherwise by this chapter, good cause for termination of a dealer agreement exists for purposes of this subchapter if:

(1) the dealer fails to substantially comply with essential and reasonable requirements imposed on the dealer under the terms of the dealer agreement, provided that such requirements are not different from requirements imposed on other similarly situated dealers either by their terms or by the manner in which

they are enforced;

(2) the dealer or dealership has transferred a controlling ownership interest in its business without the supplier's consent;

(3) the dealer has filed a voluntary petition in bankruptcy or an involuntary petition in bankruptcy has been filed against the dealer and has not been discharged earlier than the 31st day after the date the petition was filed;

(4) there has been a sale or other closeout of a substantial part of the dealer's assets related to the business;

(5) there has been commencement of an action or proceeding for the dissolution or liquidation of the dealership;

(6) there has been a change in dealer or dealership locations without the prior written approval of the supplier;

(7) the dealer has defaulted under the terms of any chattel mortgage or other security agreement between the dealer and the supplier;

(8) there has been a revocation of any guarantee of the dealer's present or future obligations to the supplier, except as provided by Subsection (b);

(9) the dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned the dealer's business;

(10) the dealer has been convicted of or pleaded nolo contendere to a felony affecting the relationship between the dealer and supplier;

(11) the dealer has engaged in conduct that is injurious or otherwise detrimental to:

(A) the dealer's customers;

(B) the public welfare; or

(C) the representation or reputation of the supplier's product; or

(12) the dealer has consistently failed to meet and maintain the supplier's requirements for reasonable standards and performance objectives, so long as the supplier has provided the dealer with reasonable standards and performance objectives based on the supplier's experience in other comparable market areas.

(b) Good cause is not considered to exist for purposes of Subsection (a)(8) if:

(1) a person revokes any guarantee of the dealer's obligations to the supplier in connection with or following the transfer of the person's entire ownership interest in the dealership; and

(2) the supplier does not require the person to execute a new guarantee of the dealer's present or future obligations to the supplier in connection with the transfer of the person's ownership interest in the dealership.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.155. NOTICE OF TERMINATION; CORRECTION OF DEFICIENCY. (a) Except as otherwise provided by this section, a supplier must provide a dealer written notice of termination of a dealer agreement at least 180 days before the effective date of termination. The notice must state all reasons constituting good cause for the termination and that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is cured within 60 days, the notice will be void.

(b) A supplier, other than a specialty agricultural equipment supplier, may not terminate a dealer agreement for the reason stated in Section 57.154(a)(12) unless the supplier gives the dealer notice of the action at least two years before the effective date of the termination. If the dealer achieves the supplier's requirements for reasonable standards or performance objectives before the expiration of the two-year notice period, the notice will be void and the dealer agreement will continue in effect.

(c) The notice and right to cure provisions in this section do not apply if the reason for termination is for any reason stated in Sections 57.154(a)(2)-(11).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 482 (S.B. 1415), Sec. 1, eff.

September 1, 2013.

SUBCHAPTER E. TERMINATION OF SINGLE-LINE DEALER AGREEMENTS

Sec. 57.201. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a single-line dealer agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.202. TERMINATION BY SUPPLIER; GOOD CAUSE REQUIRED. No supplier may terminate a dealer agreement without good cause.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.203. GOOD CAUSE DETERMINATION. (a) For purposes of this subchapter, "good cause" means failure by a dealer to comply with requirements imposed on the dealer by the dealer agreement if the requirements are not different from those requirements imposed on other similarly situated dealers.

(b) In addition to the good cause reason for termination stated in Subsection (a), good cause for termination of a dealer agreement exists when:

(1) there has been a closeout or sale of a substantial part of the dealer's assets related to the equipment business;

(2) there has been commencement of a dissolution or liquidation of the dealer;

(3) the dealer has changed its principal place of business or has added additional locations without the supplier's prior approval, which shall not be unreasonably withheld;

(4) the dealer has substantially defaulted under a chattel mortgage or other security agreement between the dealer and the supplier or there has been a revocation or discontinuance of a guarantee of a present or future obligation of the dealer to the supplier;

(5) the dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise

abandoned its business;

(6) the dealer has been convicted of or pleaded guilty to a felony affecting the relationship between the dealer and supplier; or

(7) the dealer transfers an interest in the dealership or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner, or major shareholder, withdraws from the dealership or dies, or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership, provided, however, good cause does not exist if the supplier consents to an action described by this subdivision.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.204. NOTICE OF TERMINATION; CORRECTION OF DEFICIENCY. (a) Except as provided by Subsection (b) and Section 57.205, a supplier shall provide a dealer with at least 90 days' written notice of termination. The notice must state all reasons constituting good cause for the termination and state that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is cured within 60 days, the notice will be void.

(b) Notwithstanding Subsection (a), if the good cause reason for termination is due to the dealer's failure to meet or maintain the supplier's requirements for market penetration, a reasonable period of time has existed where the supplier has worked with the dealer to gain the desired market share.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.205. NOTICE OF TERMINATION NOT REQUIRED UNDER CERTAIN CIRCUMSTANCES. The notice and right to cure provisions under Section 57.204 do not apply if the reason for termination is contained in Sections 57.203(b)(1)-(7).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

SUBCHAPTER F. WARRANTY CLAIMS

Sec. 57.251. DEFINITION OF TERMINATE AND TERMINATION. For purposes of this subchapter, "terminate" and "termination" do not include the phrase substantially change the competitive circumstances of a dealer agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.252. APPLICABILITY OF SUBCHAPTER; CONFLICT WITH SUBCHAPTER. (a) Sections 57.253, 57.254, and 57.255 apply to a warranty claim submitted by a dealer who has complied with the supplier's reasonable policies and procedures for reimbursement of the warranty claim and the claim is a warranted claim under the supplier's warranty policy.

(b) A supplier's warranty reimbursement policies and procedures are considered unreasonable to the extent of any conflict with this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.253. WARRANTY CLAIM. (a) This section applies to a warranty claim submitted by a dealer to the supplier:

(1) while the dealer agreement is in effect; or

(2) not later than the 60th day after the termination or expiration date of the dealer agreement, if the claim is for work performed before the effective date of the termination or expiration.

(b) Not later than the 45th day after the date a supplier receives a warranty claim from a dealer, the supplier shall accept or reject the claim by providing written notice to the dealer. A claim not rejected before that deadline is considered accepted.

(c) If the warranty claim is accepted, the supplier shall pay or credit to the dealer's account all amounts owed to the dealer with respect to the accepted claim not later than the 30th day after the date the claim is accepted.

(d) If the supplier rejects the warranty claim, the supplier

shall give the dealer written or electronic notice of the grounds for rejection of a rejected claim, which must be consistent with the supplier's grounds for rejection of warranty claims of other dealers, both in the terms and manner of enforcement.

(e) If no grounds for rejection of a rejected claim are given to the dealer, the claim is considered accepted.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.254. RESUBMISSION OF WARRANTY CLAIM. If a warranty claim was rejected on the ground that the dealer failed to properly follow the procedural or technical requirements for submission of a warranty claim, the dealer may resubmit the claim in proper form not later than the 30th day after the date the dealer receives notice of the claim's rejection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.255. PAYMENT OF WARRANTY CLAIM. Warranty work performed by the dealer shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions of hours, multiplied by the dealer's established customer hourly retail labor rate for non-warranty repair work, which must have previously been made known to the supplier. Parts used in warranty repair work shall be reimbursed at the current net parts cost plus 15 percent.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.256. WARRANTY CLAIM FOR CERTAIN REPAIR WORK OR INSTALLATION OF REPLACEMENT PARTS. Any repair work or installation of replacement parts performed with respect to inventory equipment of a dealer or with respect to equipment of a dealer's customers, at the request of a supplier, including work performed under a product improvement program, constitutes a warranty claim for which the dealer must be paid under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.257. AUDIT OF WARRANTY CLAIMS. (a) Except as provided by Subsection (b), a supplier may audit a warranty claim submitted by a dealer until the first anniversary of the date the claim was paid and may charge back the amount of any claim that is shown by audit to have been misrepresented.

(b) If an audit conducted under this section shows that a warranty claim has been misrepresented, the supplier may audit any other warranty claims submitted by the affected dealer within the three-year period ending on a date a claim is shown by audit to be misrepresented.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.258. ALTERNATE REIMBURSEMENT TERMS ENFORCEABLE. (a) Sections 57.253, 57.254, and 57.255 do not apply if the terms of a written dealer agreement between the parties require the supplier to compensate the dealer for warranty labor costs either as:

(1) a discount in the price of the equipment to the dealer, subject to Subsection (b); or

(2) a lump-sum payment made to the dealer not later than the 90th day after the date the supplier's new equipment is sold to the dealer, subject to Subsection (b).

(b) The discount or lump-sum payment under Subsection (a) must be or result in an amount that is not less than five percent of the suggested retail price of the equipment.

(c) The alternate reimbursement terms of a dealer agreement that comply with Subsections (a) and (b) are enforceable.

(d) This section does not affect the supplier's obligation to reimburse the dealer for parts in accordance with Section 57.255.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

SUBCHAPTER G. DELIVERY, SALE, AND RETURN OF EQUIPMENT

Sec. 57.301. COERCED ORDERS, DELIVERIES, OR REFUSALS TO PURCHASE. (a) A supplier may not coerce, compel, or require a dealer to accept delivery of equipment or a repair part that has not been voluntarily ordered by the dealer, unless:

(1) the equipment or repair part is a safety feature required by the supplier or applicable law; or

(2) the dealer is otherwise required by applicable law to accept the delivery.

(b) A supplier may not coerce a dealer to refuse purchase of equipment manufactured by another supplier.

(c) It shall not be considered a violation of this section if the supplier requires a dealer to have or provide separate facilities, financial statements, or sales staff for major competing product lines if the supplier gives the dealer at least three years' notice of such a requirement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.302. CONDITIONAL PURCHASES OF GOODS AND SERVICES. (a) A supplier may not condition the sale of equipment, repair parts, or goods or services to a dealer on the purchase of other goods or services.

(b) This section does not prohibit a supplier from requiring a dealer to purchase all repair parts, special tools, or training reasonably necessary to maintain the safe operation or quality of operation in the field of any equipment offered for sale by the dealer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.303. EQUIPMENT REPRESENTED AS AVAILABLE FOR IMMEDIATE DELIVERY. A supplier may not refuse to deliver, in reasonable quantities and within a reasonable time after receipt of a dealer's order, to any dealer having a dealer agreement for the retail sale of new equipment sold or distributed by the supplier,

equipment covered by the dealer agreement and specifically advertised or represented by the supplier as available for immediate delivery, unless the refusal is due to:

(1) the supplier's prudent and reasonable restrictions on extensions of credit to the dealer;

(2) a business decision by the supplier to limit the production volume of the equipment; or

(3) an act of nature, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the supplier has no control.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.304. DISCRIMINATION IN ORDERS. A supplier may not discriminate, directly or indirectly, in filling an order placed by a dealer for retail sale or lease of new equipment under a dealer agreement as between dealers of the same product line.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.305. DISCRIMINATION IN PRICES OF NEW EQUIPMENT. (a) Except as provided by Subsection (b), a supplier may not discriminate, directly or indirectly, in the price among different dealers with respect to a purchase of equipment or a repair part of like grade and quality and identical brand, where the effect of such discrimination may be to:

(1) substantially lessen competition;

(2) tend to create a monopoly in any line of commerce; or

(3) injure, destroy, or prevent competition with any dealer who either grants or knowingly receives the benefit of such discrimination.

(b) A supplier may charge a different price among dealers for purchases described by Subsection (a) if:

(1) the price difference is due to differences in the cost of manufacture, sale, or delivery of the equipment or repair

part;

(2) the supplier can show that the lower price was made in good faith to meet an equally low price of a competitor; or

(3) the price difference is related to the volume of equipment purchased by dealers or market share obtained by dealers.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

SUBCHAPTER H. REPURCHASE OR OTHER OBLIGATIONS FOLLOWING CANCELLATION OR NONRENEWAL OF AGREEMENT

Sec. 57.351. DEFINITION OF TERMINATE AND TERMINATION. For purposes of this subchapter, "terminate" and "termination" do not include the phrase substantially change the competitive circumstances of a dealer agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.352. APPLICABILITY OF SUBCHAPTER TO SEVERAL BUSINESS LOCATIONS COVERED BY SAME AGREEMENT. If a dealer has more than one of its business locations covered by the same dealer agreement, this subchapter applies to the repurchase of the dealer's inventory at the particular business location being closed unless the closing occurs without the permission of the supplier.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.353. PAYMENTS OR CREDITS. (a) When a supplier or dealer terminates or otherwise discontinues the dealer agreement entered into between the two parties, the supplier shall pay to the dealer, or credit to the dealer's account, if the dealer has outstanding any sums owing the supplier:

(1) an amount equal to 100 percent of the net equipment cost of all new, unsold, and undamaged equipment, less a downward adjustment for new, unsold, and undamaged equipment between 24 and 36 months old to reflect a reasonable allowance for refurbishment and the price another dealer will pay for the equipment;

(2) an amount equal to 100 percent of the net equipment cost of all unsold, undamaged demonstrators, less a downward adjustment to reflect a reasonable allowance for refurbishment and the price another dealer will pay for the equipment;

(3) an amount equal to 90 percent of the current net parts cost of new, unsold, and undamaged repair parts previously purchased from the supplier and held by the dealer on the date that the dealer agreement is terminated or expires;

(4) an amount equal to five percent of the current net parts price of all repair parts returned to the supplier to compensate the dealer for the handling, packing, and loading of those repair parts for return to the supplier, unless the supplier elects to perform the handling, packing, and loading of the repair parts itself;

(5) an amount equal to the fair market value of any specific data processing hardware or software that the supplier required the dealer to acquire or purchase to satisfy the requirements of the supplier, including computer equipment required and approved by the supplier to communicate with the supplier; and

(6) an amount equal to 75 percent of the net cost, including shipping, handling, and set-up fees, of all specialized service or repair tools that:

(A) were previously purchased pursuant to the requirements of the supplier within 15 years before the date of the applicable notification of termination of the dealer agreement; and

(B) are unique to the supplier's product line and are complete and in good operating condition.

(b) Fair market value of property subject to repurchase under Subsection (a)(5) is considered to be the acquisition cost of the property, including any shipping, handling, and set-up fees, less straight line depreciation of the acquisition cost over a three-year period. If the dealer purchased data processing hardware or software that exceeded the supplier's minimum requirements, the acquisition cost of the data processing hardware or software for purposes of this section is considered to be the acquisition cost of hardware or software of similar quality that

did not exceed the minimum requirements of the supplier.

(c) Notwithstanding any other provision of this chapter, with respect to machines with hour meters, demonstrators with less than 50 hours of use will be considered new, unsold, undamaged equipment subject to repurchase under this section.

(d) On payment of the amount due under this section or on credit to the dealer's account of the amount required by this section, title to all inventory repurchased under this subchapter is transferred to the supplier, and the supplier is entitled to possession of the inventory.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.354. LATE PAYMENT OR CREDIT. (a) All payments or allowances of credit due to a dealer shall be paid or credited within 90 days after receipt by the supplier of property required to be repurchased under this subchapter.

(b) Any payment or allowance of credit due a dealer that is not paid within the 90-day period will accrue interest at the maximum rate allowed by law.

(c) The supplier may withhold payments due under this subchapter during the period in which the dealer fails to comply with its contractual obligation to remove any signage indicating that the dealer is an authorized dealer of the supplier.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.355. LIABILITY. (a) A supplier who refuses to repurchase any inventory covered under this chapter after termination or discontinuation of the dealer agreement is liable to the dealer for:

(1) 110 percent of the amount that would have been due for the inventory had the supplier timely complied with the requirements of this chapter;

(2) any freight charges paid by the dealer;

(3) any accrued interest; and

(4) the actual costs of any court or arbitration

proceeding incurred by the dealer, including attorney's fees or arbitrator fees.

(b) The supplier and dealer will each pay 50 percent of the costs of freight, at truckload rates, to ship any equipment or repair parts returned to the supplier pursuant to this chapter.

(c) Notwithstanding any provision to the contrary in the Uniform Commercial Code, the dealer retains title to and has a first and prior lien against all inventory returned by the dealer to the supplier under this chapter until the dealer is paid all amounts owed by the supplier under this subchapter for the repurchase of the inventory required under this chapter, and the supplier must hold the proceeds of the inventory in trust for the dealer's benefit.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.356. CONSTRUCTION OF SUBCHAPTER; CREDITOR'S CLAIMS. This subchapter may not be construed to affect any security interest the supplier may have in the inventory of the dealer, and any repurchase of the dealer's inventory under this subchapter may not be subject to the claims of any secured or unsecured creditor of the supplier or any assignee of the supplier until the dealer has received full payment or credit, as applicable, under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.357. AGREEMENT TERMINATED BY DEALER; INAPPLICABILITY OF SUBCHAPTER TO CERTAIN SPECIALTY SUPPLIERS. (a) This subchapter does not apply to a specialty agricultural equipment supplier if the dealer terminates the dealer agreement without good reason. A dealer has good reason to terminate the dealer agreement for any of the following reasons:

(1) the death or disability of a majority owner of the dealership;

(2) the dealership terminates the dealer agreement and:

(A) substantially all of the dealership assets or

all shares of stock of the dealership are sold to a new owner; and

(B) no owner of the terminated dealership continues to own an interest in the continuing dealership;

(3) the filing of bankruptcy by or against the dealership that has not been discharged within 30 days after the date of the filing, the appointment of a receiver, or an assignment for the benefit of creditors; or

(4) the specialty agricultural equipment supplier:

(A) abandons the market or withdraws from the market by no longer selling to the dealer a type of equipment previously sold to the dealer that constituted a material part of the specialty agricultural equipment sold by the supplier;

(B) consistently sells products to the dealer that are defective or breach the implied warranty of merchantability;

(C) consistently fails to:

(i) provide adequate product support for the type and use of the product, including technical assistance, operator and repair manuals, and part lists and diagrams;

(ii) provide adequate training required by the supplier for maintenance, repair, or use of the supplier's products; or

(iii) provide marketing and marketing support for the supplier's product if marketing is a requirement of the dealer agreement;

(D) consistently fails to meet the supplier's warranty obligations to the dealer as required by contract or law, including obligations under this chapter;

(E) has engaged in conduct that is injurious or detrimental to the dealer's customers, the public welfare, or the dealer's reputation;

(F) has made material misrepresentations to the dealer or has falsified a record;

(G) has breached the dealer agreement; or

(H) has violated this chapter.

(b) This subchapter may not be construed to limit a specialty agricultural equipment supplier's obligation to

repurchase a dealer's inventory as provided by this section if the supplier terminates or otherwise discontinues the dealer agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.358. EXCEPTIONS. (a) A supplier is not required to repurchase from a dealer:

(1) a repair part that, except as provided by Subsection (b), is in a broken or damaged package;

(2) a repair part that because of its condition cannot be resold as a new part without repackaging or reconditioning;

(3) any inventory for which the dealer is unable to furnish evidence, satisfactory to the supplier, of clear title, free and clear of all claims, liens, and encumbrances unless the inventory will be free and clear of all claims, liens, and encumbrances immediately on payment by the supplier of amounts due in this subchapter to the lienholders;

(4) any inventory that the dealer wants to keep, provided the dealer has a contractual right to keep the inventory;

(5) equipment delivered to the dealer before the beginning of the 36-month period preceding the date of notification of termination; and

(6) equipment or a repair part that:

(A) is ordered by the dealer on or after the date of notification of termination;

(B) is acquired by the dealer from a source other than the supplier, unless the equipment or repair part was ordered from, or invoiced to the dealer by, the supplier;

(C) is not in new, unsold, undamaged, or complete condition, subject to the provisions of this chapter relating to demonstrators; and

(D) is not returned to the supplier before the 90th day after the later of:

(i) the effective date of termination of a dealer agreement; or

(ii) the date the dealer receives from the

supplier all information, including documents or supporting materials, required by the supplier to comply with the supplier's return policy.

(b) The supplier will be required to repurchase a repair part in a broken or damaged package for a repurchase price that is equal to 85 percent of the current net parts cost for the repair part if the aggregate current net parts cost for the entire package of repair parts is $75 or more.

(c) Subsection (a)(6)(D) does not apply to a dealer if the supplier did not give the dealer notice of the 90-day deadline at the time the applicable notice of termination was sent to the dealer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

SUBCHAPTER I. ACTIONS AND REMEDIES

Sec. 57.401. CIVIL ACTION; INJUNCTIVE RELIEF. (a) If a supplier violates any provision of this chapter, a dealer may bring an action against the supplier in a court of competent jurisdiction for damages sustained by the dealer as a consequence of the supplier's violation, including damages for lost profits, together with the actual costs of the action, including the dealer's attorney's fees and paralegal fees and the costs of arbitrators. The dealer may also be granted injunctive relief for unlawful termination.

(b) A remedy provided by this section is not exclusive and is in addition to any other remedy permitted by law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.402. CHOICE OF REMEDIES. The provisions of this chapter are supplemental to any dealer agreement between the dealer and the supplier that provides the dealer with greater protection. A dealer may elect to pursue its contract remedy or the remedy provided by state law, or both. An election by the dealer to pursue those remedies does not bar the dealer's right to

exercise any other remedies that may be granted at law or in equity. Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.